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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/750,271

Applicant(s)

DOSMANN ET AL.

Examiner

NEIL TURK

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 21-29 and 31-33 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-10, 21-29, and 31-33 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 1/2/04 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/888)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Remarks

This Office Action fully acknowledges Applicant's remarks filed on October 31st, 2008. Claims 1-10, 21-29, and 31-33 are pending. Claims 11-20 and 30 have been cancelled. Claims 33 has been newly added.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 31st, 2008 has been entered.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the embodiments which have one, two, three, five, and more overillumination redirection facets must be shown or the feature(s) canceled from the claim(s). This applies in the case of claims 1-10, 21-24, and 29-33. Further, with regard to claim 2, the embodiment which only includes the illumination redirection facet must be shown. With regard to claim 3, the embodiment which only includes a detection redirection facet must be shown.

In the case of claims 25-28, the drawings must show four, five, and more overillumination redirection facets. Further, with regards to claim 29, the drawings must show the embodiment where the read window is disposed along the input light path in constitution with the elements of claim 29. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter within **claims 23, 26, and 33**. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: claims 23, 26, and 33 require that at least one of the overillumination redirection facets are disposed at approximately 45 degrees from the illumination input area. Applicant's specification, however, as shown in paragraph [0018] of the pre-grant publication 2004/0142370 discloses four facets 22, 24, 26, and 28 that reflect input light approximately perpendicular to the illumination light guide 18, and discloses that each of the facets 22-28 are positioned so as to remove top, bottom, left, and right portions of the overilluminating light. This description, however, does not disclose the respective acute angle of at least two facets with respect to the illumination light guide, as well as the approximate 45 degree angle of at least one facet relative to the illumination input area. Thereby, Applicant must provide proper antecedent basis in the specification for such limitations.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-10, 21-28, and 33 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for four overillumination redirection facets disposed at one or more angles relative to the input light path, does not reasonably provide enablement for one, two, three, five, or more overillumination redirection facets. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make/use the invention commensurate in scope with these claims. Applicant's specification only describes, in constitution with the currently recited limitations of independent claims 1 and 25, an optical format which has four overillumination redirection facets 22, 24, 26, and 28. This can be most readily seen in Applicant's pre-grant publication US 2004/0142370 in paragraphs [0018-0023]+, for example. Examiner notes that paragraph [0019] of Applicant's pre-grant publication recites, "More or fewer [overillumination] redirection facets may be employed as required by specific optical formats". This disclosure does not provide the enabling disclosure to such specific optical formats which have more or fewer facets. The disclosure does not provide enabling support to the specific optical format being claimed to be enabled for one, two, three, five, and more [overillumination] redirection facets, as the embodiments of claims 1 and 25 are only disclosed and described with respect to four overillumination redirection facets. Applicant's claims are

drawn to the specific optical format which requires four overillumination redirection facets. Examiner further notes that paragraph [0025] describes, in relevant part, "...In addition to the components described above, FIG. 3 shows one overillumination redirection facet 28 adapted to redirect reference beam 46." However, such a disclosure, even if taken to read on an optical format with only one overillumination redirection facet (the disclosure recites "In addition to the components described above" which appears to include the other three facets 22, 24, 26), such an embodiment as described here is not commensurate with the current limitations recited in claims 1 and 25 and thereby does not provide enabling disclosure to the case where one overillumination redirection facet is utilized.

Claims 29, 31, and 32 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for four overillumination redirection facets disposed at one or more angles relative to the input light path, as well as a read window disposed perpendicularly to the input light path, does not reasonably provide enablement for one, two, three, five, or more overillumination redirection facets and a read window disposed along the input light path. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make/use the invention commensurate in scope with these claims. As similarly described above, Applicant's disclosure is limited to four overillumination redirection facets. With respect to the disposition of the read window, Examiner asserts that if Applicant may recite the "input light path" to extend further in relative structural terms in

such a fashion, where the "input light path" extends to the read window. In such a case where the claims are amended as such, the read window may be said to be disposed along the input light path. However, as currently recited, the read window is only enabled to be disposed perpendicular to the input light path. Examiner further notes that, in all cases, the read window must be recited to be perpendicular to the illumination light guide, as such an element 18 is only shown to be related as such. Further, Applicant's pre-grant publication is only enabled for the case in which the detection guide 40 is disposed parallel to the illumination light guide 18.

Claim 23, 26, and 33 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a format that further includes an illumination redirection facet between the light guide and the read window and disposed at an angle approximately 45 degrees from the input area and further comprising a detection redirection facet between the read window and the detection guide and disposed at an angle approximately 45 degrees from the input area, does not reasonably provide enablement for one or more of the overillumination redirection facets to be disposed at 45 degree angles from the input area, as recited in claims 23, 26, and 33. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make/use the invention commensurate in scope with these claims. As described in Applicant's pre-grant publication, the illumination redirection facet 30 and detection redirection facet 38 are the only elements described as being disposed 45 degrees relative to the illumination light guide 18, and further their

placement between respective pieces is the only placement disclosed that enables the format (paragraphs [0019-0023]+, figures). Applicant's specification does not describe the relative angular positioning of the facets 22, 24, 26, and 28. Applicant's specification only generally speaks of the facets 22, 24, 26, and 28 being positioned so as to remove overilluminating light from the top, bottom, left, and right of the input beam (paragraph [0018]+).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10, 21-29, and 31-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regards to independent claims 1, 25, and 29, it is unclear what is meant by the amended recitation of "overilluminating light". What is overilluminating light and how does it relate to the actual structural arrangement of the device? Overilluminating light is not an element of the claimed format, and is drawn to a process/functional limitation. Further, the recitation to the overillumination redirection facets intersecting and directing away overilluminating light are drawn to process and functional limitations not afforded patentable weight in a device claim. Applicant must establish the structural arrangement of the overillumination redirection component, and its constituent facets, with respect to the various guides and window recited so as to form an optical format in

which this "intersecting" and "redirecting" of "overilluminating light" is a consequence of the structural arrangement. Applicant is further reminded that he/she is afforded one statutory class of a claim, i.e. a method or an apparatus.

Additionally, such "overilluminating light" is further unclear as the device is not recited to receive/pass/guide light of any sort. Does Applicant intend to recite a light source for providing an input light beam, and such light beam is directed throughout the device by way of the various structural elements? Examiner points to paragraphs [0018]+ for relevant disclosure. As recited above, Applicant must recite the structural arrangement (optical format) which, as a consequence, produces these intended effects of intersecting and redirecting overilluminating light from the light guide 18. This applies to each of independent claims 1, 25, and 29.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7-9, 21-23, and 29-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Lemelson (4,803,992), hereafter Lemelson.

Lemelson discloses a catheter or device 10 with an elongated housing 11 that includes a cable 21 (illumination input area at the offset of the cable) formed of four

separate light pipes 22 (an illumination light guide), 24, 26, and 28 (detection guide, passing light to a photoelectric detector at the output of light pipe 28; lines 25-41, col. 4). Lemelson further discloses that a cavity 16 (read window disposed approximately perpendicular to the input light path) is formed in the front end portion 13 that allows light energy to be directed therethrough to scan fluent material, such as body fluid existing in the cavity (line 38, col. 3 – line 2, col. 4; fig. 1). Lemelson also discloses that the device contains a plurality of reflecting surfaces 14 and 15 (two overillumination redirection facets located adjacent to, and to redirect light away from the illumination light guide) for respectively receiving light energy passed through the lens 23 of light pipe 22 from a source light and is then directed to reflect off reflecting surface 15 to receiving lens of the light pipe 28 along which it passes to a photoelectric detector coupled to the other end of light pipe 28 (lines 3-54, col. 4).

Claims 1, 7, 9, 21-23, and 29-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Meserol (EP 0254246 A2).

Meserol discloses an improved cuvette. Meserol discloses a cuvette 10 in combination with a lancet 12 (extending outwardly from read window 22), where the cuvette has a top 14 and a bottom 15, closed wall 18, access slot 20 and a cavity 22 (for fluid, such as blood) (lines 25-40, col. 4, figs 1-4). Meserol discloses that the cavity 22 may be filled with a medium such as an optically transparent gel provided with a reagent test system (lines 8-21, col. 5). Meserol also discloses integrally formed optical elements, such as light beam 30 from source 32, which passes through the cuvette

(input area and illumination light guide is defined in the optically transmissive portion of the cuvette where light enters from source 32) and is reflected by reflecting prism 50 across cavity 22 (read window disposed approximately perpendicular to the input light path) to reflecting prism 48 (reflectors 48 and 50 constitute the one or more overillumination redirection facets) and back out through the sample cuvette (detection guide is defined in the optically transmissive portion of the cuvette where light is reflected back and out of the cuvette) to optical element 36 (detection element at the outlet end of the detection guide) (lines 1-42, col. 5; lines 10-41, col. 6, figs 5&6). With regard to claim 2, reflecting prism 50 is between the illumination light guide and the read window. With regard to claim 3, reflecting prism 48 is between the read window and the detection guide. Examiner asserts that Meserol reads on claim 24 as discussed directly above with respect to prisms 50 and 48.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meserol in view of Lundsgaard et al. (5,525,518), hereafter Lundsgaard.

Meserol has been discussed above.

Meserol discloses a lancet for obtaining a sample, but does not disclose that the lancet is adapted to deposit the sample onto the read window.

Lundsgaard discloses a needle 20 and sampling cavity connected for determination of a blood gas parameter in which the needle draws a blood sample through aperture 21 and into the conduit 21 down through measuring chambers 300, 400, 500, 600 (lines 52-67, col. 7, fig. 3).

It would have been obvious to modify the Meserol device such as taught by Lundsgaard to provide the other end of the lancet for deposition of the sample onto the

read window in order to allow for direct sample deposition on to the test area, so as to avoid any loss of sample incurred from taking the pierced patient's skin and wiping sample into the cavity.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meserol in view of Naka et al. (6,001,307), hereafter Naka.

Meserol has been discussed above.

Meserol does not disclose reagent provided on the read window.

Naka discloses an optical analyzing device in which when the covering 5a is transparent and light may be irradiated through the covering, a reagent film impregnated with a reagent may be stuck on the inner surface of the covering 5a (lines 38-46, col. 10, fig. 1a-b).

It would have been obvious to modify the Meserol device to include reagent provided on the window such as taught by Naka, such that it would be obvious to place the reagent on the window (or any location), in which location the reagent will come into contact with the sample as desired for an assay with sample and reagent interacting.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson.

Lemelson has been discussed above.

Lemelson does not disclose that the detection guide cross-sectional area is larger than the illumination light guide cross-sectional area.

It would have been obvious through routine experimentation to optimize the Lemelson device to the relative cross-sectional dimensions as recited in the claim in order to provide an optimal light path through the device.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meserol. Meserol has been discussed above.

Meserol does not disclose that the detection guide cross-sectional area is larger than the illumination light guide cross-sectional area.

It would have been obvious through routine experimentation to optimize the Meserol device to the relative cross-sectional dimensions as recited in the claim in order to provide an optimal light path through the device.

Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson in view of Lipson et al. (4,710,623), hereafter Lipson.

Lemelson has been discussed above.

Lemelson does not disclose at least three overillumination redirection facets.

Lipson discloses an optical fiber catheter with a reactive element contained therein. Lipson discloses an optical cable 12 with a hole 18 for holding a reactive element 20. Lipson discloses that a reflective coating 22 may be applied to outer surfaces of the cable, and the reflective coating may be constructed to be wavelength specific, whereby certain wavelengths of light are reflected and others are allowed to be transmitted out of the first end 14. Lipson discloses that this significantly improves the

ability of the system to quantify the desired information by reducing or eliminating wavelengths of light passing through but not interacting with the reactive element (column 4, figs. 1&2). Lipson further discloses that the amount of alteration or change in a property of the incident light 38 is dictated by the change in the property of the reactive element 20 as it interacts with the blood, or other bodily fluid. Lipson discloses that the change in the incident light 38 is a function of the reaction between the reactive element and the fluid to be analyzed (lines 53-67, columns 5; column 6). Examiner asserts that, as shown in figure 2, the reflective coating 22 covers four surfaces, which each constitute an overillumination redirection facet.

It would have been obvious to modify the Lemelson device to include four overillumination redirection facets such as taught by Lipson as another design means for analyzing bodily fluid characteristics through light interaction and alterations.

Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meserol in view of Lipson.

Meserol has been discussed above.

Meserol does not disclose at least three overillumination redirection facets.

Lipson has been discussed above.

It would have been obvious to modify the Lemelson device to include four overillumination redirection facets such as taught by Lipson as another design means for analyzing bodily fluid characteristics through light interaction and alterations.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meserol in view of Lipson as applied to claims 25 and 26 and in further view of Lundsgaard.

Meserol discloses a lancet for obtaining a sample, but Meserol in view of Lipson does not disclose that the lancet is adapted to deposit the sample onto the read window.

Lundsgaard have been discussed above.

It would have been obvious to modify the Meserol/Lipson device such as taught by Lundsgaard to provide the other end of the lancet for deposition of the sample onto the read window in order to allow for direct sample deposition on to the test area, so as to avoid any loss of sample incurred from taking the pierced patient's skin and wiping sample into the cavity.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meserol in view of Lipson as applied to claims 25 and 26 and in further view of Naka.

Meserol/Lipson does not disclose reagent provided on the read window.

Naka has been discussed above.

It would have been obvious to modify the Meserol/Lipson device to include reagent provided on the window such as taught by Naka, such that it would be obvious to place the reagent on the window (or any location), in which location the reagent will come into contact with the sample as desired for an assay with sample and reagent interacting.

Response to Arguments

Applicant's arguments filed October 31st, 2008 have been fully considered but they are not persuasive.

With regards to claims 1, 7-9, 21-23, and 29, 31, and 32 rejected under 35 USC 102(b) as being anticipated by Lemelson, Applicant traverses the rejection.

With regards to independent claims 1 and 29, Applicant argues that the reflecting surfaces 14, 15 of Lemelson are not overillumination redirection facets disposed at one or more angles relative to an input light path to intersect overilluminating light such that the overilluminating light is directed away from the input light path. Examiner argues the reflecting surfaces 14, 15 (collectively designated as an overillumination redirection component) are disposed as such to the input area and illumination light guide at one or more angles relative to the input light path and provide for such directing as claimed. Examiner further notes that Applicant's arguments that show emphasis on the term "overillumination" are not found persuasive in view of the reflecting surfaces of Lemelson. Examiner asserts that such a term is merely a nominal designation and does not impart any further structure to the facets so as to preclude the reflecting surfaces 14, 15 from being likewise nominally designated. Further, Applicant's arguments are drawn to process and functional limitations not afforded patentable weight in device claims. Applicant's arguments toward the difference in how light is "directed away" is drawn to a process and functional limitation. Whereas claimed elements may be provided with functionalites, as the claims are drawn to a device, Applicant must patentably distinguish the claims over the cited art in terms of structure

and not in terms of function and/or processes. Examiner argues that as Lemelson discloses the recited structural elements/arrangement as claimed, the device of Lemelson provides for such direction of the light.

Applicant further argues that as claims 7, 9, 21-23, 31, and 32 depend in some manner from independent claims 1 or 29, the dependent claims are improperly rejected as discussed above. Examiner argues that as there are no such deficiencies in the rejection of independent claims 1 and 29, dependent claims 7, 9, 21-23, 31, and 32 are maintained properly rejected.

With regards to claims 1, 7, 9, 21-23, and 29, 31, and 32 rejected under 35 USC 102(b) over Meserol, Applicant traverses the rejection.

With regards to independent claims 1 and 29, Applicant argues that the reflecting prisms 48, 50 of Meserol are not overillumination redirection facets disposed at one or more angles relative to an input light path to intersect overilluminating light such that the overilluminating light is directed away from the input light path. Examiner argues the reflecting surfaces 48,50 (collectively designated as an overillumination redirection component) are disposed as such to the input area and illumination light guide at one or more angles relative to the input light path and provide for such directing as claimed. Examiner further notes that Applicant's arguments that show emphasis on the term "overillumination" are not found persuasive in view of the reflecting prisms of Meserol. Examiner asserts that such a term is merely a nominal designation and does not impart any further structure to the facets so as to preclude the reflecting prisms 48, 50 from

being likewise nominally designated. Further, Applicant's arguments are drawn to process and functional limitations not afforded patentable weight in device claims. Applicant's arguments toward the difference in how light is "directed away" is drawn to a process and functional limitation. Whereas claimed elements may be provided with functionalites, as the claims are drawn to a device, Applicant must patentably distinguish the claims over the cited art in terms of structure and not in terms of function and/or processes. Examiner argues that as Meserol discloses the recited structural elements/arrangement as claimed, the device of Meserol provides for such direction of the light.

With regards to claims 4-6 and 25-28 rejected under 35 USC 103(a) in the various combinations, as discussed above in the body of the action, Applicant traverses the rejection.

Applicant argues that as neither Lemelson nor Meserol alone anticipate claim 1, as discussed above, the rejection of dependent claims 4-6 does not overcome such deficiencies. Examiner argues that as there are no such deficiencies in the rejection of independent claims 1 over Lemelson and Meserol alone, and thereby claims 4-6 are properly rejected in their various combinations as presented above.

Applicant further argues that Lemelson, Meserol, Lundsgaard, Lipson, Naka, or any combination thereof fail to disclose all the elements of claims 25-28. Applicant argues that, as discussed above with claim 1, neither Lemelson nor Meserol disclose the claimed overillumination redirection facets, and independent claim 25 requires three

overillumination redirection facets. Applicant thereby argues that Lipson does not cure the deficiencies of Lemelson or Meserol. Applicant argues that the citations in Lipson do not add anything new to the citations of from Lemelson or Meserol. Examiner argues that the combination of Lemelson in view of Lipson and the combination of Meserol in view of Lipson are both proper in rejecting claims 25 and 26, as discussed above. Examiner argues that Lipson provides disclosure to four reflective surfaces, which each constitute an overillumination redirection facet. Examiner thereby asserts that it would have been obvious to modify both of Lemelson and Meserol, individually, to include four overillumination redirection facets such as taught by Lipson as another design means for analyzing bodily fluid characteristics through light interactions and alterations. Examiner further asserts that further dependent claims 27 and 28 are properly rejected in the above cited combinations with respect to both Meserol/Lipson/Lundsgaard and Lemelson/Lipson/Lundsgaard, as no such deficiencies exist in the combinations used to reject independent claim 25.

With regards to claims 2, 3, and 24, Applicant's arguments are moot in view of the new grounds of rejection as discussed above, as claims 2, 3, and 24 are now rejected over 35 USC 112, 1st paragraph and 35 USC 112, 2nd paragraph, as well as the objection to the drawings with respect to claims 2, 3, and 24.

With regards to new claim 33, Applicant's arguments are moot in view of the new grounds of rejection, as discussed above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL TURK whose telephone number is (571)272-8914. The examiner can normally be reached on M-F, 9-630.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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NT

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